

### Judge Brown, cont.

also a member of the American Legion Auxiliary.

Since 1998, Judge Brown has been an Indiana Registered Civil Mediator. She served on the Board of Directors of the Indiana Judicial Conference and on the Board of Managers of the Indiana Judges Association. She is a former member of the Indiana Supreme Court Character and Fitness Committee as well as the Judicial Administration Committee and the Appointed Judicial Officers Task Force of the Indiana Judicial Conference.

Judge Brown was a Leader in the Brooks Inn of Court in Evansville and a Benchner in the Sagamore Inn of Court in Indianapolis. She was an officer for four years of the Dubois County Bar Association, serving as President in 1985.

A 1993 graduate of the Richard G. Lugar Excellence in Public Service Series, she served on that organization's Board of Governors from 1993 to 1998.

In 1992, Judge Brown received the Outstanding Young Hoosier Award from the Indiana Jaycees, one year after the Jaycees presented her with its Distinguished Service Award.

A Dubois County native, she is the mother of two children, an elementary teacher and a student at the Indiana University School of Medicine.

### Judge Barteau, cont.

and was President of the Association of Family and Conciliation Courts in 1980.

Judge Barteau is the author of "Thirty Years of the Journey of Indiana's Women Judges 1964-1994," published in the *Indiana Law Review* in 1997.

She earned her Master of Laws degree from the University of Virginia in 1995.

## Attorneys for the Parties

### For Appellant Rogers

**John Nichols** holds degrees from Indiana University's Kelly School of Business and Capital University in Columbus, OH. He was admitted to the Indiana bar in 1984 and is also admitted to the Northern and Southern Federal Districts of Indiana and the 7<sup>th</sup> U.S. Circuit Court of Appeals.

Mr. Nichols is a sustaining member and associate board member of the Indiana Trial Lawyers Association and a member of the Indiana Trial Lawyers College of Fellows. He received the 2006 Civility Award from the Indiana State Bar Association's Litigation Section and has been named a "Super Lawyer" in the area of personal injury law.

Mr. Nichols has been a partner in the law firm of Anderson and Nichols since 1990 and has tried more than 100 jury trials. He was among lead counsel in the Orville Lynn Majors civil litigation, which involved a nurse who was convicted of killing six people at Vermillion County Hospital in Clinton, IN.

He is married to Jane Nichols and has two children: Catherine, who will graduate from IU McKinney School of Law this spring, and Caroline, who is an education major at Indiana University.

### For Appellee Sigma Chi

**Kristine Lindley** grew up in Marshall, IL and attended the University of Illinois at Urbana-Champaign, where she earned a B.S. in Journalism in 1990 and

a J.D. *magna cum laude* from the University of Illinois College of Law in 1993. While in law school, she served as Associate Editor of the University of Illinois Law Review.

Ms. Lindley focuses her practice on the defense of litigated matters. Her experience includes the areas of transportation law, premises liability, products liability, construction law, and insurance coverage disputes, as well as general business litigation. She is admitted to practice in all state courts in Indiana and Illinois, as well as federal courts in the Northern and Southern Districts of Indiana.

An animal lover to the core, in her free time Ms. Lindley likes to advocate for the adoption of shelter pets and working with animal charities, as well as spending time with her family and her own pets.

### For Appellees "Individual Defendants"

**Thomas N. Leslie** was born in Indianapolis and attended North Central High School. He earned a B.S. in Industrial Economics at Purdue University's Krannert School of Management in 1968. He earned a J.D. from Indiana University School of Law-Bloomington, where he was active with Student Legal Services.

After law school, he joined the firm of Sparrenberger, Duvall, Tabbert & Lalley, eventually becoming a junior partner before entering sole practice in 1977. While Mr. Leslie has a general practice

throughout central Indiana, he specializes as a trial lawyer in the area of major felony defense, having tried more than 250 jury trials. He also specializes in domestic relations law and has written published articles including "Child Custody in Indiana."

He is a former Deputy Marion County Prosecutor and a former Public Defender. Although his appellate practice consists of no more than one or two appeals per year, he has had experience in oral argument before the 7<sup>th</sup> U.S. Circuit Court of Appeals in Chicago.

He is a member of the American Bar Association and the National Association of Criminal Defense Lawyers and is admitted to practice in Indiana, the Southern District of Indiana federal courts and the 7<sup>th</sup> U.S. Circuit.

Mr. Leslie has one son, who recently graduated from Indiana State University.

### They said it . . .

It is emphatically the province and duty of the Judicial Department to say what the law is. Those who apply the rule to particular cases must, of necessity, expound and interpret that rule. If two laws conflict with each other, the Courts must decide on the operation of each.

- Chief Justice John Marshall

The day you see a camera come into our courtroom, it's going to roll over my dead body.

- Justice David Souter

## COURT OF APPEALS OF INDIANA ORAL ARGUMENT AT A GLANCE UNIVERSITY OF SOUTHERN INDIANA

# Rogers v. Sigma Chi, et al

### CIVIL LAW ISSUES:

- Whether Appellees had a duty to protect Appellant from harm.
- Whether Appellee Sigma Chi International is vicariously liable for Appellant's injury.
- Whether Appellant is entitled to punitive damages.

### ORAL ARGUMENT:

Tuesday, April 15, 2014  
1 p.m. CDT

### APPEAL FROM:

Vigo Superior Court  
The Honorable  
Phillip I. Adler, Judge

## Synopsis: Case No. 84A04-1305-CT-224

**R**ogers was a student at Northwestern University in Evanston, IL. In August of 2008, a Facebook party invitation announced a "Double Birthday Bash" to celebrate the birthdays of Daniel Johnson, a friend of Rogers' from high school, and Johnson's girlfriend. The location of the party was indicated as "THE NEW HOUSE, Terre Haute IN." The invitation said "\*\*\*ALSO THIS IS NOT A RUSH EVENT, AND AS IT IS DURING DRY RUSH NO FRESHMEN MALES ALLOWED!\*\*\*."

Rogers and three other friends of Johnson's drove to Terre Haute to attend the party. When Rogers was intoxicated, another guest, Dana Scifres, punched him in the eye. Scifres was not a member of Sigma Chi. Rogers and Scifres had not met

before the party, and Rogers said in a deposition that he did not think anybody could have anticipated the assault. Scifres had been to the house before, but he had not shown aggression or anger on those occasions.

Johnson, along with Ancil Jackson, Brian Mifflin Jr., and Joshua Kearby, (the "Individual Defendants") rented the house where the party was held. The Individual Defendants were not at the house when Scifres hit Rogers. The house was owned by R2r Properties, LLC. The lease provided the tenants would pay all utilities and could not use the house for any purpose other than a private dwelling.

The Individual Defendants were members of the Terre Haute chapter of Sigma Chi. Neither the local chapter nor Sigma Chi International sponsored the party, paid for it, or

had any say in who was invited, but Mifflin said in his deposition that "anytime two or three fraternity members are together I believe per the [Interfraternity Council] rules, that's kind of considered a Greek function no matter where it's at."

The local chapter had a house until spring of 2008, when it was repossessed and its residents were evicted. Thereafter, students who were Sigma Chi members had to live in university housing or private dwellings. The local chapter was assigned a room in the science building on campus where it could conduct its meetings and perform its rituals.

Alumni of the chapter had a storage locker where chapter items were kept, but some ritual materials and

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Case synopsis, cont.

pledge books were kept at the party house so chapter members could take them to the science building when needed.

Kearby was treasurer of the chapter, and he kept the chapter’s checkbook and a receipt book in his bedroom. Rogers said he believed some ritual garments called “spook suits” had been moved from the Sigma Chi house to the party house for safe-keeping.

The chapter’s president did not live at the party house and Sigma Chi mail was not delivered there. Sigma Chi did not pay rent on the party house. There were Greek letters in individual bedrooms, but not on the outside of the house or in the yard. The tenants paid the expenses for the gatherings they held there. During the 2008-2009 school year, four other tenants, some of whom were not Sigma Chi members, signed on to the lease and moved in.

Rogers sued Sigma Chi International, the local chapter, and the Individual Defendants. Rogers alleges all the defendants had a duty to protect him from being assaulted at the party, because the local Sigma Chi chapter had possession and control of the house where he was injured.

He also argues Sigma Chi International was vicariously liable for the acts of the persons at the premises because it had apparent authority over them as Sigma Chi’s agents.

Finally, Rogers argues he is entitled to punitive damages.

The defendants asked for, and were granted, summary judgment, and Rogers is appealing that judgment.

Appeals on Wheels

The Court of Appeals hears oral arguments across Indiana to enable Hoosiers to learn more about the judiciary’s indispensable role in Indiana government.

Since its 2000-2001 centennial, the court has held more than 390 “traveling oral arguments” at high schools, colleges, law schools and other venues.

Today’s oral argument is the court’s 11<sup>th</sup> *Appeals on Wheels* event this year, and the 13th overall at the University of Southern Indiana.

Indiana 1891: Every docket tells a story

*Indiana Appellate Court Reports, Vols. 1, 2, and 3*, include the complete written opinions of several hundred cases decided by the court in its first two terms. Naturally, the legal issues before the court were many and varied. But the underlying facts, taken together, paint a vivid picture of Indiana’s economy and society circa 1891 – the same year James Naismith invented basketball.

**Agriculture** was an economic mainstay, and even city residents maintained livestock. In *The Noblesville Gas and Improvement Company v. Teter*, the court affirmed damages of \$60 against the gas company for the death of Teter’s cow after it fell into an open gas line trench.

The opinion notes that by county and city ordinance, “cows were permitted to run at large within the city (of Noblesville) within the day time.”

**Railroads** were frequent litigants. *Vols. 1, 2, and 3* record 34 railroad-related appeals, many involving damages to livestock, but also other issues. In a disputed-fare case from Greene County, the court ruled for the railroad but admonished the company “if unnecessary force was used in expelling the appellee from the train.”

*Vol. 1* also includes two cases involving The Western Union Telegraph Co. One of them, *Western Union v. Trumbull*, cited an 1885 law that anticipates current legal and policy arguments about **Internet neutrality**.

The relevant passage of the law said that telegraph companies “shall in no manner discriminate in rates charged, or words or figures charged for, or manner or conditions of service between any of its patrons, but shall serve individuals, corporations and other telegraphic companies with impartiality.”

Then as now, fraught **domestic relations** occupied a significant share of the docket.

In *Story v. Story*, the court affirmed judgment against a father who’d been sued by his daughter for nonpayment of \$3 a week for house and farm work.

*Marshall et al v. Bell* involved a father’s promissory note for support and maintenance of a “bastard child.”

And in *Adams v. Main*, the court affirmed a trial court’s judgment that the appellant had alienated the affections of the appellee’s wife, even without proof of adultery. Such proof was not required, per the Appeals Court.

**Contract disputes** comprised a large part of the docket, too, and some describe prevailing wages and prices.

In *Greene v. McIntire et al*, the court affirmed judgment against New York City grain merchants who had contracted to buy 20,000 bushels of “grade No. 2 red wheat” from a Knox County farmer. Price: \$14,891, or 74 cents per bushel. (In December 2013, March 2014 wheat deliveries were trading at \$6.39/bushel at the Chicago Board of Trade.)

Mr. Trumbull, the appellant in the *Western Union* case cited above, paid 25 cents for his telegram.

Another case put the value of a Warren County house, lot, furnishings, and various materials and repairs at \$531.85.

*Vols. 1, 2, and 3* include just **18 criminal appeals** (all others assigned to the Supreme Court), many involving crimes of vice such as gambling, liquor violations and prostitution (referred to in one case as “a certain house of ill fame” in Valparaiso).

The court affirmed the trial court’s decision 13 times in those cases, or 72 percent.

Today’s Panel of Judges

The Honorable  
Elaine B. Brown  
(Dubois County)

**Elaine B. Brown** was appointed to the Court of Appeals by Gov. Mitch Daniels in May 2008. Before joining the Court of Appeals, she was a trial court judge for over 15 years and practiced law for 11 years.

She is an adjunct faculty member of the Indiana University Maurer School of Law, and is a 1996 graduate of the Indiana Judicial College, a 2012 graduate of the Indiana Graduate Program for Judges, and a Fellow of the American Bar Foundation.

Judge Brown served as judge of the Dubois Superior Court from 1987 to 1998 and from 2005 to May, 2008.

In the years between her tenure on the bench, she maintained a solo practice in Jasper and was a senior litigator with Fine & Hatfield in Evansville. Earlier in the 1980s, she practiced law with the firm of Thom & DeMotte in Jasper.

Judge Brown earned a bachelor’s degree with distinction from Indiana University in 1976, and her J.D. from the IU School of Law in Bloomington in 1982. She was a teacher in the Jasper School Corporation for three years before entering law school.

A large part of Judge Brown’s professional focus during her years on the trial court bench was on substance abuse issues. She initiated a countywide alcohol and drug program, served as President of the Dubois County Substance Abuse Council, and created the county’s Drug Court. She initiated and served on the Dubois County Community Corrections Advisory Board for over a decade.

Judge Brown currently serves on the Judicial System Improvement Committee and the Attorney Fee Dispute Resolution Committee of the Indiana State Bar Association, on the Alternative Dispute Resolution Committee of the Indiana Judicial Conference, and on the Indiana Supreme Court Judges and Lawyers Assistance Program Committee. She is

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The Honorable  
Melissa S. May  
(Vanderburgh County)

Born in Elkhart, **Melissa S. May** studied criminal justice at Indiana University-South Bend before earning her law degree from Indiana University School of Law-Indianapolis in 1984. She then launched a 14-year career in private legal practice in Evansville that focused on insurance defense and personal injury litigation.

Judge May moved directly from private practice to the Court of Appeals in 1998 and was retained by election in 2000 and 2010. Prior to this year, she served as Presiding Judge of the Fourth District, which covers all of Indiana.

Judge May has long been active in local, state and national bar associations and foundations, with a particular focus on continuing legal education and appellate practice. At various times, Judge May has chaired the Indiana State Bar Association’s Litigation and Appellate Practice sections and was secretary to the Board of Governors.

As chair of the Indiana Pro Bono Commission (for the public good), Judge May worked with 14 pro bono districts to train lawyers and mediators on how to assist homeowners facing foreclosure. She also serves on an Indiana Judicial Conference Committee that translated all civil jury instructions into “plain English.”

Judge May teaches trial advocacy at Indiana University McKinney School of Law and frequently speaks on legal topics to attorneys, other Judges, schools, and other professional and community organizations. She is special counsel to the American Bar Association’s Standing Committee on Attorney Specialization, on which she’s served since 2003.

In October 2011, Judge May received the Women in the Law Recognition Award from the Indiana State Bar Association for her dedication to helping women advance in the legal community.

She and her husband live in Morgan County.

The Honorable  
Betty Barteau  
(Marion County)

**Betty Barteau** is a Boonville native whose legal career has spanned the worlds of private practice, government service and international legal and judicial education. She was the first female trial court judge in Marion County and only the third woman to serve on the Court of Appeals of Indiana.

Judge Barteau earned her LLB with distinction from Indiana University School of Law-Indianapolis in 1965 and was admitted to the bar that year. She engaged in the private practice of law in Warrick County from 1965-69 and in Marion County from 1975-90. While in Warrick County, she also served as Boonville City Judge, deputy prosecutor in Spencer and Warrick counties and Warrick County attorney.

Judge Barteau served as Marion Superior Court Judge from 1975 through 1990 and was appointed to the Court of Appeals in 1991 by Gov. Evan Bayh.

She resigned in 1998 to become Director of the Russian American Judicial Partnership, a Moscow-based USAID program that promoted the rule of law in former Soviet republics. Judge Barteau returned to Indiana in 2004 and has served since then as a Senior Judge on the Court of Appeals.

Active in various professional and community organizations, Judge Barteau has received many awards and recognitions for her work in both areas.

She is a member of the Indianapolis, Indiana State and American Bar Associations and was a member of the *Indiana Law Journal* and Order of the Coif. Judge Barteau was a founding member of the National Association of Women Judges and served on its Board of Directors from 1979-81 and from 1989-91.

She served from 1978-2003 on the National Judicial College Faculty

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